



## **LIBRARY OF CONGRESS**

### **Copyright Office**

**[Docket No. 2011-1]**

### **Cable Statutory License: Specialty Station List**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final specialty station list.

**SUMMARY:** The Copyright Office is publishing a final list of stations listed in affidavits sent to the Copyright Office in which the owner or licensee of the station attests that the station qualifies as a specialty station in accordance with the Federal Communications Commission's ("FCC") definition of specialty station in effect on June 24, 1981. The list shall be used to verify the specialty station status of those stations identified as such by cable systems on their semi-annual statements of account.

**DATES** Effective Date: [Insert date of publication in **Federal Register**].

**Applicability Dates:** The list is applicable to statements of account filed with the Copyright Office beginning with the first accounting period of 2012 covering January 1, 2012 to June 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Assistant General Counsel, and Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Under the cable statutory license, 17 U.S.C. 111, a cable operator may retransmit the signal of a distant television station identified as a specialty station at the base rate rather than at the higher 3.75% rate that is incurred for the carriage of a non-permitted signal. 37 CFR 256.2(c). Specialty station status is determined by reference to the former regulations of the FCC which defined a specialty station as "a commercial television broadcast station that generally carries foreign-language, religious, and/or automated programming in one-third of the hours of an average broadcast week and one-third of the weekly prime-time hours." 47 CFR 76.5(kk) (1981). The specialty station designation was part of a complex regulatory structure governing the carriage of distant network

station signals in the 1970s. However, the FCC no longer determines whether a station qualifies as a specialty station. It repealed its distant signal carriage rules in 1981 and has not reviewed its specialty station policy since that time. Nevertheless, the Office still keeps an active list because it is relevant to the calculation of royalties under Section 111.

On this point, it should be noted that over twenty years ago, the Office implemented policies and procedures concerning notice to the public regarding specialty stations, the point of which was to provide all interested parties with a chance to comment on those stations claiming specialty status. It was the Office's intention at that time that the notice, publication, and objection procedures would give all parties a chance to cooperate in their assessment of the specialty stations on the list. 54 FR 38461, 38464 (September 18, 1989). The Office published its first specialty station list in 1990 under these procedures which allowed the owner of the station to file an affidavit with the Office attesting to the fact that the station's programming comports with the 1981 FCC definition, and hence, qualifies it as a specialty station. 55 FR 40021 (October 1, 1990). The Office noted at that time that it would periodically update the list and has done so on several occasions.

Accordingly, on January 28, 2011, the Office again initiated a proceeding to update the list with the publication of a Notice in the **Federal Register** asking the owner, or a valid agent of the owner, to file a sworn affidavit stating that the station's programming satisfies the FCC's former requirements for specialty station status. 76 FR 5213 (January 28, 2011). The Office received affidavits from 63 broadcast stations for which the owner or licensee of the television station had filed the requested affidavit. The Office then published an initial specialty station list in the **Federal Register** on April 22, 2011. 76 FR 22733 (April 22, 2011).

In the aforementioned Notice, the Office stated that any party objecting to any claim to specialty station status must submit comments with the Office stating his or her objections within thirty days of publication of this Notice in the **Federal Register**. The Motion Picture Association of America, Inc. ("MPAA") made such a filing and objected to the inclusion of certain television stations. MPAA also

contended that the Register has the authority to determine whether a particular station is properly identified as a specialty station. In its objection, MPAA referred to the standards set forth in 17 U.S.C. 411(b)(1) regarding the use of a registration certificate for purposes of filing an infringement suit, noting that the certificate of registration would not be valid for this purpose if the application contained inaccurate information which, “if known would have caused the Register of Copyrights to refuse registration.” MPAA maintained that the same principle should apply in the case of specialty stations where the Office has accurate information to make a final determination as to whether a particular station should be characterized as a specialty station.

In a subsequent notice, the Office provided an opportunity for the television broadcast stations that had filed affidavits attesting to their specialty station status the opportunity to rebut any objections filed to their identification as a specialty station and clarify their status for the purposes expressed herein. Moreover, the Office sought comment on MPAA’s contention that 17 U.S.C. 411(b)(1) provides authority for, or is relevant to, whether the Office can make a final determination on the classification of a broadcast station as a specialty station. *See* 76 FR 69288 (Nov. 22, 2011). In addition, in keeping with its earlier practices, the Office notified each station directly of the objection to its filing and of the opportunity to file reply comments in support of its affidavit.

Storefront Television, LLC d/b/a Caribbean Broadcasting Network (“Storefront”), the licensee of WPRU-LP, WSJX-LP, and WVXF(TV) responded to the objection of the MPAA to the inclusion of its three stations in the specialty station list compiled by the Office. It commented that the FCC determined that English language programming is foreign language programming in Puerto Rico and English language stations imported into the San Juan market are considered specialty stations. *See Cable Television Co. of Puerto Rico*, 46 FCC 2d 1096 (1974); *Cable TV Puerto Rico*, 68 FCC 2d 609 (1978). It asserted that WPRU-LP and WSJX-LP, as English language stations licensed in Puerto Rico, qualified as specialty stations. With regard to WVXF(TV), Storefront stated that this television station is licensed to the US Virgin Islands, but its English language programming is imported into Puerto Rico. It concluded

that this station also qualified as a specialty station under the circumstances. *See* Storefront Reply to Opposition at 1-2.

Venture Technologies Group, LLC(“VTG”) (licensee of WNYA-CA, KHTV-LP, WNJJ-LD, KEBK-LP, KFIQ-LP, KILA-LP, KMRZ-LP, KRMV-LP, KRPE-LP, KRVD-LP, KSCZ-LP, KSGO-LP, WXOX-LP, KFMP-LP, KDBK-LP, W20CM, W26DB, W34DI, W42CX, W46DQ, W49DK, W52DW, W59EA), Four Seasons Peoria, LLC (licensee of WBQD-LP), World Television of Washington, LLC, and WLFM, LLC (licensee of WLFM-LP) also filed a response to MPAA’s objection to the inclusion of several of their stations on the specialty station list compiled by the Office. These four broadcast groups asserted that their listed stations carry automated programming in at least one-third of the hours of an average broadcast week and one third of the weekly prime-time hours. They concluded that all listed stations qualified as specialty stations under the FCC’s former rules and the affidavits submitted asserting the status of each station are accurate. They also stated that the fact that a licensed station is temporarily off the air because of technical or other considerations should not prevent that station from being included on the Specialty Station list as long as the station met the FCC’s criteria for a specialty station prior to going silent and will meet the criteria when it returns to the air. *See* VTG et. al. Reply to Opposition at 1-3.

No one, however, filed comments responsive to the Office’s request regarding the Register’s authority to resolve any dispute concerning the identification of a particular station as a specialty station. Nevertheless, the Office has considered MPAA’s arguments and rejects its contention that Section 411(b)(1) provides any basis for the Register to make these determinations. Contrary to MPAA’s claims, there is no statutory authority under this provision for the Register to make any substantive determinations with regard to specialty station status.

In 2008, Congress passed the Prioritizing Resources and Organization for Intellectual Property Act, Pub L. 110-403, which *inter alia* added a new paragraph 411(b) to ensure that no court holds a registration certificate invalid due to what it considers to be a misstatement on an application without first

obtaining input from the Register as to whether the application was properly filed. The legislative history states that Congress adopted this amendment “to prevent intellectual property thieves from exploiting th[e] potential loophole” that would allow them to argue that “a mistake in the registration documents, such as checking the wrong box on the registration form, renders a registration invalid and thus forecloses the availability of statutory damages.” H.Rep. No. 110-617, at 24 (2008).

The language of this provision is solely directed at registration. There are no words, phrases or terms that tie this provision in any way to Section 111, much less specialty stations. Nor does it convey any general authority on the Register to opine on the characterization of a station as a specialty station under a defunct FCC regulation. Rather, Section 411(b) is a narrowly crafted provision that provides a mechanism for the court to seek an opinion from the Register on the consequences of an error on the registration certificate under the Copyright Office’s policies and practices.

The Office also rejects MPAA’s suggestion that the Office adopt the principles of Section 411(b) to deny specialty station status based on the information provided in the affidavit. Whereas the Office’s registration practices and policies provide a basis for the Office to advise the court on the significance of an error on the certificate, the same is not true with respect to the specialty station list. The policies and procedures for creating this list are limited in scope and do not establish a process by which the Office can resolve the specialty station status of a particular station, regardless of the purported facts. Since the inception of this process, the Office has stated clearly that it would not play a role in determining the merits of a specialty station claim, noting that “it should not itself verify the specialty station status of particular stations.” 54 FR 38466 (September 18, 1989). The Office has also commented that it periodically provides an updated annotated list so that “cable systems can make an informed decision as to whether MPAA or any other party might contest the system’s carriage of a particular station on a specialty basis.” 56 FR 61056 (November 29, 1991). In light of these policies and practices, there is no support for MPAA’s contention that the Office can make determinations regarding the specialty status of a particular station under the principles underlying Section 411(b).

As noted above, the Office received affidavits from 63 broadcast stations for which the owner or licensee of the television station had filed the requested affidavit. Since the publication of the initial list, the Office received 24 additional affidavits, attesting to the specialty station status of the 24 identified stations. Because the Office received a substantial number of late filed affidavits, the Office found it necessary to seek input from the public regarding the asserted specialty station status of these particular stations and allow any interested party to file an objection to these newly listed stations. *See* 76 FR 69288 (November 8, 2011). No one filed any objections to the television stations listed in this most recent Federal Register publication. As such, these stations shall be duly listed here.

The final list of specialty stations, as identified in the affidavits and published herein, shall be applicable to accounting periods beginning on January 1, 2012. Licensing examiners shall refer to the final annotated list in examining a statement of account where a cable system operator claims specialty station status for a particular station. If a cable system operator claims specialty station status for a station not on the published final list, the examiner shall determine whether the owner of the station has filed an affidavit since publication of the list.

With regard to the treatment of contested specialty stations after this proceeding concludes, it is important to note that the Licensing Division examiners will look at these stations in the same way they have done in the past. That is, if a cable operator claims specialty station status for a contested station on the list, the examiner will inform the operator by letter that a particular party objects to the “specialty station characterization.” *See* 54 FR 38461, 38464 (September 18, 1989). The cable operator may then file an amended Statement of Account and recalculate royalties, if the operator so chooses.

### **Final Specialty Station List**

CBAFT, Moncton, New Brunswick, Canada  
CBFT, Montreal, Quebec, Canada  
CBKFT, Regina, Saskatchewan, Canada  
CBLFT, Toronto, Ontario, Canada  
CBOFT, Ottawa, Ontario, Canada  
CBUFT, Vancouver, British Columbia, Canada  
CBVT, Quebec City, Quebec, Canada  
CBWFT, Winnipeg, Manitoba, Canada  
CBXFT, Edmonton, Alberta, Canada  
CHLT-TV, Sherbrooke, Quebec, Canada  
CIMT, Riviere-du-Loup, Quebec, Canada  
CJBR, Rimouski, Quebec, Canada  
CKSH, Sherbrooke, Quebec, Canada  
CKTM, Trois-Rivieres, Quebec, Canada  
CKTV, Saguenay, Quebec, Canada  
K24IC-D, Bellingham, WA  
KAZA-DTV, Avalon, CA  
KBBC-TV, Bishop, CA  
KBCB, Bellingham, WA  
KBFD-DT, Honolulu, HI  
KBKF-LP, San Jose, CA  
KCGI-CA, Cape Girardeau, MO  
KCSO-LD, Sacramento, CA  
KDBK-LP, Caliente, CA

KEBK–LP, Bakersfield, CA  
KEFM–LP, Chico, CA  
KFIQ–LP, Lubbock, TX  
KFMP–LP, Lubbock, TX  
KHTV–LP, Los Angeles, CA  
KILA–LP, Cherry Valley, CA  
KMRZ–LP, Moreno Valley, CA  
KNET–CA, Los Angeles, CA  
KNLA–LP, Los Angeles, CA  
KNNN–LP, Redding, CA  
KRMV–LP, Walnut, CA  
KRPE–LP, Banning, CA  
KRVD–LP, Banning, CA  
KSCZ–LP, Greenfield, CA  
KSFV–CA, Los Angeles, CA  
KSGO–LP, Chico, CA  
KSXC–LP, S. Sioux City, NE  
KTSF, San Francisco, CA  
KWHY–TV, Los Angeles, CA  
KWTB–LP, Tucson, AZ  
W07DP–D35, Harrisburg, PA  
W14DFD–TV14, Elliptsburg, PA  
W16COD–TV16, Middleburg, PA  
W20CM, Port Jervis, NY



W26DB, Port Jervis, NY  
W29CO-TV29, Sharon, PA  
W34DI, Port Jervis, NY  
W42CX, Port Jervis, NY  
W45BT-TV45, Brookville, PA  
W46DQ, Port Jervis, NY  
W46EJ-D21, Clarksburg, WV  
W49DK, Port Jervis, NY  
W52DW, Port Jervis, NY  
W59EA, Port Jervis, NY  
WAQP, Saginaw, MI  
WBNF-CA, Buffalo, NY  
WBPA-LP, Pittsburgh, PA  
WBQD-LP, Davenport, IA  
WCHU-LP, Chicago, IL  
WDWO-CA, Detroit, MI  
WDYR-CA, Dyersburg, TN  
WHCT-LP, Hartford/Springfield, CT  
WINM, Angola, IN  
WKBS-TV47, Altoona, PA  
WLFM-LP, Chicago, IL  
WLJC-TV, Beattyville, KY  
WLXI, Greensboro, NC  
WMBC-TV, Newton, NJ  
WNJJ-LD, Paterson, NJ

WNYA-CA, Kinderhook, NY

WNYB, Jamestown, NY

WPCB-TV40, Greensburg, PA

WPRU-LP, Aguadilla, P.R.

WRAY-TV, Wilson, NC

WRLM, Canton, OH

WSJP-LP, Aguadilla, P.R.

WSJX-LP, Aguadilla, P.R.

WTCT-Marion, IL

WTLJ, Muskegon, MI

WVXF(TV), Charlotte Amalie, USVI

WXTI, Greensboro, NC

WXOX-LP, Cleveland, OH

XERV-TV, Reynosa, Tamaulipas, Mexico

XHAB-TV, Matamoros, Tamaulipas, Mexico

**Dated:** March 21, 2012

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Maria A. Pallante,  
Register of Copyrights.

**[BILLING CODE: 1410-30-P]**

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